

**Department of Justice**  
**Division of Criminal Investigation / Investigation Support Bureau**  
**Criminal Records & Identification Services Section**  
**SJ7 Working Group Meeting #4 - April 9<sup>th</sup> & 10<sup>th</sup>, 2008**

**SJ7 WG Questions regarding background checks:**

**1. How does the fingerprint based background check process work?**

One set of rolled fingerprints are submitted on a blue Applicant fingerprint card (Form FD-258). Completed and signed fingerprint cards are mailed or delivered by the qualified entity to the DOJ Criminal Records & Identification Services Section in Helena. Fingerprint cards may not be submitted by individuals. Receipt for payment is prepared, or the appropriate agency is billed (payment due monthly).

A quality control analysis is conducted on the fingerprint card to verify that all required demographic information is included and that the rolled fingerprint impressions are of a sufficient quality for processing. Cards rejected at this point are mailed back to the qualified entity with an explanation of the reason rejected. A new set of prints may be submitted along with a copy of the rejected prints at no additional charge.

The fingerprint card is processed by DOJ through the Western Identification Network (WIN) (\*see Note 1) and the Federal Bureau of Investigation (FBI). Once the fingerprints are processed, the results are printed and attached to the fingerprint card for return to the qualified entity. The results will consist of one of the following:

1. Notification that the individual does not have a criminal history record.
2. A copy of the individual's complete criminal history record (rap sheet).
3. Notification that the fingerprints were rejected due to poor print quality. A new set of prints may be submitted along with a copy of the FBI reject notification at no additional charge. Once the FBI has rejected the individual's prints twice, a name based national check may be run by the FBI at no additional charge.

(\*Note 1) WIN is a consortium of state and local law enforcement agencies that have implemented a shared network and Automated Fingerprint Identification System (AFIS) processing service to provide the ability to search the criminal fingerprint records of the member agencies. WIN members include Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.

**2. What are the costs involved?**

Blank fingerprint card forms:	No cost
Fingerprint training by DOJ:	No cost
Fingerprints rolled by DOJ/CRISS:	\$5.00
Fingerprints rolled by other agencies:	\$5.00 - \$40.00
Name based MT public background check:	\$10.00
Name based MT public background check via Internet:	\$11.50
Fingerprint based MT/WIN background check:	\$10.00
Fingerprint based National background check:	\$29.95 (Employees)
	\$25.25 (Volunteers)

### **3. What is public information and can be released?**

A public criminal history record is available to anyone for a fee and contains the complete criminal record except for personal descriptors and dismissals after a deferred imposition of sentence.

A confidential record is available only to criminal justice agencies, to those authorized by law to receive it, by court order and to the individual of record. Confidential criminal history information includes all physical identifiers and dismissals after a deferred imposition of sentence.

Results of a fingerprint based background check done under the authority of Public Law 92-544 (see Note 2) will include the individual's full criminal history record (rap sheet). Results may be shared with other qualified entities if a user agreement is in place and a consent form has been obtained (see attached FBI letter dated November 2, 2006).

#### **(\*Note 2) Public Law (PL) 92-544 Requirements**

The authority for the FBI to conduct a criminal record check for a non-criminal justice licensing or employment purpose is based upon PL 92-544. Pursuant to PL 92-544, the FBI is empowered to exchange identification records with officials or state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's authority to approve the statute is delegated to the FBI which uses standards established by a series of memoranda issued by the Office of Legal Counsel, US DOJ. The standards are:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicant/licensees.

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### **4. How long does a FBI fingerprint check take?**

Current processing time usually takes 5 - 10 working days. This does not include mailing time or time (up to three working days) needed while DOJ attempts to obtain arrest disposition information that may be missing from the criminal history record.

### **5. What is the difference between a name-based search and a fingerprint-based search?**

Name-based searches look for criminal history records that match a person's name and numeric identifier, such as date of birth and/or Social Security number. Name-based searches have two inherent weaknesses:

- False-positives - a record is returned on a person with the same name and numeric identifier provided in the request but who is not the subject of the inquiry.
- False-negatives - no match is erroneously returned because the name or numeric identifier in the record does not match the name or numeric identifier used in the inquiry.

Fingerprint based checks provides a positive biometric identification of the person regardless of the name or numerical identifiers utilized.

#### **5. How can criminal history record background check results be challenged?**

If a person challenges a denial of an opportunity to volunteer or be employed by the authorized entity on the basis of a criminal history background check result, the person can be provided a copy of the criminal history record after verifying their identity. If a person believes their criminal history record is in error, they must contact DOJ for assistance in correcting the error. Procedures for challenging and correcting criminal record information are contained in MCA 44-5-215. There is a \$10.00 charge if fingerprint verification required for a Montana record; \$18.00 if for a FBI record.

#### **6. How frequently should new background checks be done?**

There are currently no set requirements regarding frequency of follow-up background checks. The criminal history repository is a dynamic file with new arrests added daily. Each qualified entity will have to determine how frequently their employees and volunteers need to be re-checked. Considerations for setting a frequency might also include employee turnover rate as well as the cost involved.

#### **7. What are the audit requirements for DPHHS and Providers?**

The compliance audit program is still under development, but the intent is to initially conduct an on-site audit/training visit of all qualified agencies/entities. After the initial audit a periodic sample of entities will be audited. This audit could consist of an on-site audit, a mail-in questionnaire, a phone interview or a combination of these methods. Audits will not routinely be conducted more frequently than once every three years. If questions arise regarding the confidentiality or security of information from a specific qualified entity, DOJ may conduct an audit of the entity to ensure that all provisions in the user agreement are being enforced. Authorized agencies may also be required to participate in FBI audits of the state of Montana. The FBI audits of Montana take place once every three years.

**Pros vs. Cons for each of the three background check disqualifying event options:**

**Option #1**

**Full Fingerprint Background Check**

**Pros:**

- Most reliable results through positive ID of the applicant
- Only method available to obtain national check

**Cons:**

- Associated costs
- Processing time
- Process for obtaining fingerprints (such as, who will print the applicants?)
- Fiscal impact to DOJ for increased work load
- Requires statute to meet PL 92-544 requirements

**Option #2**

**Criminal Background Check Required & the State Prescribes a Process of a Progressive Check**

**Pros:**

- Associated costs are initially less if starting with a name based check
- Turn around time for name based results may be faster than fingerprint check

**Cons:**

- Increased chance of false or missed matches if name based
- Applicant may not provide accurate information negating the results of a name based check
- May actually take more of the Provider's time and resources in managing and verifying the information provided by the applicant.
- Requires statute to meet PL 92-544 requirements if fingerprint based

**Option #3**

Some type of Criminal Background Check Required. Employer has policies and procedures to determine their process. DPHHS will explain possibilities but the employer will decide.

**Pros:**

- Will allow the Provider to choose how thorough of a check they want to conduct on applicants
- Could reduce the amount of time to get information back
- Allows Providers to control costs

**Cons:**

- Background checks may not provide complete information on applicants
- There may be an inconsistency on background checks from Provider to Provider dependant on how and by whom the checks are conducted
- Least dependable of the three options to provide accurate information regarding criminal history
- Requires statute to meet PL 92-544 requirements if fingerprint based



U.S. Department of Justice

Federal Bureau of Investigation

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Criminal Justice Information  
Services Division  
Clarksburg, WV 26306  
November 2, 2006

TO: ALL CJIS SYSTEMS OFFICERS AND STATE IDENTIFICATION BUREAU  
REPRESENTATIVES

The purpose of this letter is to advise that the dissemination of an individual's criminal history record information (CHRI) to a nongovernmental entity (NGE) with the individual's consent and at his direction is not legally objectionable under Federal law.

The safety and well-being of children and other vulnerable individuals is a national priority. The National Child Protection Act (NCPA), as amended by the Volunteers for Children Act (VCA), encouraged states to authorize fingerprint-based national criminal history record information (CHRI) background checks of individuals having access to children and other vulnerable people, by enacting legislation under Public Law (Pub. L.) 92-544.<sup>1</sup> The NCPA/VCA also authorized entities in states without specific Pub. L. 92-544 legislation to obtain national CHRI background checks.<sup>2</sup> Recommended policies and procedures for implementation of the NCPA/VCA were previously set out by the FBI in the Criminal Justice Information Services (CJIS) Information Letter 99-3.<sup>3</sup>

The success of this national initiative of child protection is dependent on the cooperation by the states in the implementation of the NCPA/VCA and other federal and state legislation.<sup>4</sup> Many states have established programs for conducting criminal history record background checks on individuals who work with children, the elderly, or the disabled. A successful example is the Volunteer & Employee Criminal History System (VECHS) program developed by the Florida Department of Law Enforcement (FDLE) using the basic framework of NCPA/VCA with the added feature of dissemination of an individual's CHRI to NGEs at his request. By establishing strict controls on the access and use of CHRI by entities enrolled in the VECHS program, the FDLE has created a program that facilitates the performance of criminal history record checks on thousands of individuals who work with children, the elderly, or individuals with disabilities.

As a result of the success of the VECHS program, the National Crime Prevention and Privacy Compact Council requested the FBI to provide advice on the dissemination under the NCPA/VCA of an individual's CHRI to an NGE with the individual's consent. The FBI has no legal objection to the dissemination of CHRI at the consent of the individual, as the practice does not conflict with Federal law.<sup>5</sup> Other states planning to establish CHRI background check programs, that include the dissemination of CHRI to NGEs, must incorporate the following provisions. Since state laws vary widely, all agencies are advised to review any proposed programs with legal counsel.

ALL CJIS SYSTEM OFFICERS AND STATE IDENTIFICATION BUREAU  
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The state shall establish procedures for program participation by NGEs which serve children, the elderly, or disabled persons. The NGEs must execute a user agreement that sets out the terms under which the criminal history record checks may be performed, including the security requirements for protection of the CHRI and the procedures for challenging the accuracy and completeness of the CHRI as entitled by the NCPA/VCA and 28 Code of Federal Regulation 50.12.<sup>6</sup>

The NGE shall obtain an executed consent form (waiver) from every employee or volunteer subjected to the criminal history record check. The NGE shall retain the original waiver and transmit a copy to the state. The terms of the waiver must include an acknowledgment that the NGE will perform an FBI criminal history records check and that the state is specifically authorized to disseminate the resulting CHRI, if any, to the NGE.<sup>7</sup> The waiver may further authorize the NGE to provide the CHRI to another NGE. The NGE must maintain a record of any secondary dissemination of the CHRI.

For more information about the VECHS program, please contact the FDLE's User Services Bureau, VECHS Unit, at (850) 410-VECHS (8324) or log on the FDLE's website at [www.FDLE.state.fl.us/BackgroundChecks](http://www.FDLE.state.fl.us/BackgroundChecks). For more information about the NCPA/VCA, please contact Mr. Allen Wayne Nash, FBI, CJIS Division's Criminal Information & Transition Unit, at (304) 625-2738.

Sincerely yours,

David Cuthbertson  
Section Chief

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<sup>1</sup> See 42 U.S.C. § 5119a. The CHRI background checks under the NCPA/VCA determine whether the individual has been convicted of crimes that bear upon his fitness to have responsibility for the safety and well-being of children, the elderly or individuals with disabilities.

<sup>2</sup> 42 U.S.C. § 5119a(a)(1).

<sup>3</sup> Contact the CJIS Divisions' Communications Unit at (304) 625-4995 for a copy of the CJIS Information Letter 99-3 (12/01/1999).

<sup>4</sup> See e.g. The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003 (42 U.S.C. § 5119a note), as amended, and The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248).

<sup>5</sup> Access to CHRI by the subject of the record, or by an authorized representative with the consent of the subject, cannot be withheld under the Freedom of Information Act. See Title 5, U.S.C. § 552a(d)(1) and (t)(1).

<sup>6</sup> An example of a legally sufficient UA under Florida law may be obtained from FDLE.

<sup>7</sup> An example of a legally sufficient waiver under Florida law may be obtained from FDLE.